Askew v. *La Cynge Bank*, 24 Am. L. Reg. 410.

In *Butler* v. *Wendell*, 57 Mich. 62, a New York assignment with preferences, which would have been invalid if made in Michigan, was declared superior to an attachment of personal property by an Illinois creditor.

In *Sanderson* v. *Bradford*, 10 N. H. 260, a Massachusetts assignment containing preferences invalid if made in New Hampshire, was upheld against an attachment of personal property by an English creditor.

In *Chafee* v. *Bank*, 71 Me. 514, the question was discussed, but in that case the attaching creditor had assented to the assignment by accepting a dividend under it. See also, *Receiver* v. *Bank of Plainfield*, 34 N. J. Eq. 450; *First Nat. Bank of Attleboro* v. *Hughes*, 10 Mo. App. 7; *Atwook* v. *Protection Ins. Co.*, 14 Conn. 555, overruled by 44 Conn. 196.

Upon a careful review of the authorities and the reasons supporting them, we incline to believe the doctrine of the principal case correct. To the reasoning in *Bentley* v. *Whittemore*, cited above, that of an early Missouri case seems an apt reply: "But admitting that our courts would be bound, upon principles of comity, to give effect to an assignment made in Pennsylvania as against creditors living in that state, upon what principle must the Pennsylvania law be administered here to a creditor who resides in Maryland? Why may he not insist on the *lex domicilia* with the same justice as the assignors who live in Philadelphia? The *lex loci contractus* can hardly apply in this case, inasmuch as the creditor suing never acceded to the terms of this assignment and was no party to the instrument; and the law of the domicile may as well be applicable to the contract on which he sues as the law of the interpleader's domicile to that contract on which they rely. The only reasonable and fair rule in a case of this character seems to be to administer the law of this state, the state in which the property lies, where the suit is brought, and whose laws are invoked for the protection of the rights of the respective parties:" *Brown* v. *Knox*, 6 Mo. 302; *Jenks* v. *Ludden*, 34 Minn. 482.

For a discussion of the attempted distinction between debts and movables, see note to *Askew* v. *La Cynge Bank*, 24 Am. L. Reg. 408.

CHAS. A. ROBBINS.

Lincoln, Neb.

Superior Court of Kentucky.

PULLMAN PALACE CAR COMPANY, APPELLANT, v. THOMAS G. GAYLORD, APPELLEE.

The Pullman Palace Car Company does not undertake to provide its cars with safes or other receptacles in which to deposit baggage, wearing apparel, money, jewelry, or other valuables (23 Am. Law Reg. N. S. 788), and hence is not liable for the loss of valuable jewelry stolen from a passenger, there being no other omission on the part of the company shown except the failure to provide such safe or other receptacle and a force to guard the car. The company is only bound to keep a reasonable watch over the plaintiff and his property.

APPEAL from Jefferson Common Pleas Court.

BOWDEN, J.—On a former appeal, prosecuted by the appellant,

it was held that a demurrer to a petition that failed to charge it with *negligence*, whereby the scarf-pin was lost, should have been sustained. It was then said that the company undertakes to keep a reasonable watch over the passenger and his property, and that the faithful performance of this undertaking is the limit of its duty in this respect.

The *amending allegation* made on the return of the case is that the scarf-pin "was, by the *negligence* of defendant, its agents and employees in charge of said car, stolen from and lost to plaintiff," and that the "defendant, in the conduct of its business aforesaid, induced him to rely upon the watchfulness and care of defendant, its agents and employees in charge of said sleeping-car, to prevent such loss, which was occasioned without fault of plaintiff, and wholly through the neglect of defendant to exercise such ordinary care to prevent the same."

The jury found specially:

1. The company's servants in charge of the car were not negligent in the discharge of their duties.

2. They kept a reasonable watch over the plaintiff and his property.

3. They were competent and faithful.

4. The loss of the pin was not caused oy nor the result of their failure to keep a reasonable watch over the plaintiff and his property.

5. The question was: "Was the scarf-pin of plaintiff lost by reason of the negligence of the defendant's officers, servants or employees in charge of the car on which plaintiff was a passenger, or of any other of defendant's officers, servants or employees?" The answer was, "We say yes."

6. Question: "If they answer question 5 in the affirmative, then they will, in answer to this, say what officers, servants or employees of defendant were guilty of such negligence, and in what respect were they or either of them so negligent?" Answer: "We say the president and directors of the company were negligent in not providing a proper receptacle for passengers' property, or in not providing force to guard the car."

7. The pin was worth $300.

The fifth finding is not that the servants in charge of the car were negligent; they had been fully exculpated by the preceding findings; the jury meant that others had been negligent, as specifically stated in the sixth answer. The form of this finding is not

precise; but special verdicts must not be subjected to the utmost rigor of criticism; it is enough if it appears with reasonable certainty what the jury means. The meaning here is that the president and directors had been negligent in both of these things: 1st. They had not provided a proper receptacle for the property of passengers. 2d. They had not supplied the car with a sufficient number of servants to guard it; and their conclusion was that the absence of either of these things constituted negligence.

It is clear that the company was entitled to a judgment on the findings, unless the fifth and sixth answers are sufficient to prevent it.

1. There was not a proper receptacle for passengers' property. Construing the verdict in the light of the pleadings we will suppose this to mean that the company, in having its car constructed, had not provided a secure place in which it could put the property of passengers, thus protecting it from other passengers or from those casually in the car.

It seems to us something more than doubtful if the pleadings invited an examination of this question as one of fact. It is difficult to believe that even the most cautious counsel, on reading the allegations of the petition, would think it even prudent to advise the company to prove that its cars, being a parlor by day and a lodging-room by night, could not be so constructed as to perform these functions, and yet provide greater security. Such are the operating forces that possibly a plan which, in the opinion of the inexperienced would meet every want, would be regarded by those familiar with the conditions as a constant menace to property and life. It is a question so very different from that of casual negligence in management, that the ordinary form in which negligence may be charged does not seem to give sufficient notice that such an issue will be made.

But conceding the sufficiency of the allegation, upon what ground can one complain of the inadequate construction of the car? There it is. He sees it. All the possibilities resulting from its construction lie before him. He knows there is no way by which he can lock others out; and he would be a reckless man who would avail himself of an advantage so full of peril. He knows there is no place of absolute security for his attire, his money or his jewelry; and he knows that the company does not offer to become the custodian of them. If, in his opinion, there is too much risk, though

there be a faithful watch, he should not attempt it. The consequences to sleeping-car companies would be ruinous if a pilfered passenger could, having taken a berth with a full knowledge of the conditions, have it submitted to a jury whether a different construction of the car would not have been more secure, or whether a safe depository might not have been kept on the car, with a salaried attendant to deposit and deliver to passengers as they come and go. The answer to all such questions is, that the company does not undertake that kind of business.

It has no contract relation with a person in regard to his property except as to such reasonable sums of money as may be proper for current expenses, personal attire, watches, and such belongings as go with the person, and such as a guest at an inn might properly take with him to his room at the inn-keeper's risk. It is not a common carrier, nor an inn-keeper, nor under a like liability. If it should have been a depository and should accept the custody of the passenger's effects, it would assume the liability of a bailee for hire; but under the rule proposed it becomes liable absolutely and unconditionally for everything the passengers have with them, unless it assumes responsibility by taking the custody; the mere absence of the depository would be negligence; and there would be no escape. The company, which is not a common carrier, and which does not desire to become one, would thus be forced to become the actual custodian of personal effects, increasing its expenses by the necessity of employing men of achieved moral reputation at prices that would probably increase the charge for berths, and then, even with the greatest care, incurring the responsibility without the reward of carrier of goods; or it would fare worse by being held liable on the ground that a failure to undertake this custody is itself proof of negligence making it liable. For when it is conceded that the company will not take the custody when tendered, a passenger need not make the futile tender. He may retain the custody of his effects at the unconditional risk of the company.

If that were the law, it would have been invoked in some of the adjudged cases. Most of them show that the passenger placed his effects under his pillow or elsewhere near his person in the berth; but in none is there any intimation that the company could be held liable on the ground that it did not provide a secure place. No such provision has ever existed; and the steady negative evidence of the decided cases is against such a ground of liability.

2. The company did not provide a force sufficient to guard the car. It is not bound to such excessive and expensive care. It must keep a reasonable watch. It is a fact well known that one conductor and one porter constitute the usual force. The findings here show that there were "servants in charge of the car," how many does not appear. They were competent, faithful and diligent. Such is the finding. If, as the jury say, they kept a reasonable watch over the plaintiff and his property, and the property was not lost by reason of their negligence, the whole duty of the company was performed, and no value whatever is to be given to the conclusion of the jury that it was negligent not to provide a force sufficiently numerous to guard the car. That is a legal opinion, and we do not think it is sustained by adjudged cases. It certainly goes far beyond the measure of duty prescribed by this court in its former opinion, which constitutes the law of this case, and could not be disregarded by us if we were not, as we are, entirely satisfied that it is correct. One competent and faithful watcher at a time has been considered sufficient; it is the custom to have only one. *Pullman Palace Car Co.* v. *Gardner*, 16 Amer. & Eng. Rd. Cases 324, is a case in which the company was held not to be liable for implied negligence on account of having only one. No force to do guard duty is required.

Judgment should have been rendered for the defendant on the findings, and the judgment is now reversed and the case is remanded, with direction to set it aside and render a judgment for the defendant for costs.

We have examined this record and concur.—J. Q. WARD, J. BARBOUR.

This case in a former appeal was reported in 23 Am. Law Reg. (N. S.) 788.

The general question involved was also considered in *Lewis* v. *N. Y. Cent. Sleeping Car Co.*, *ante*, p. 359, and *Whitney* v. *Pullman Palace Car Co.*, *ante*, p. 366, in the notes to which we collected the cases upon the subject. Upon the present appeal the questions are somewhat different. The case is somewhat interesting as an example of the proneness of juries to travel outside the record for the purpose of meeting what they consider the equities of the case, even if by doing so they involve their verdict in inconsistency. The court has, however, met the issue raised by the special findings, and has, as it seems to us, arrived at a reasonable and just conclusion. To hold otherwise than was held in the principal case would impose an unreasonable liability upon a very useful, if not indispensible, class of public servants. We think the rule that the company has performed its duty if it exercises reasonable and ordinary care for the security of the property of its passengers, having in view the danger reasonably to be apprehended under the circumstances of the

case, which appears to have been the rule of decision in the principal case, is all that reason and justice require for the protection of the public, it being well settled that such companies are neither innkeepers nor common carriers. See note to *Lewis* v. *N. Y. Cent. Sleeping Car Co.*, *ante*.

M. D. EWELL.

Chicago.

Supreme Judicial Court of Massachusetts.

ELIJAH C. LAWRENCE, APPELLANT, *v.* PULLMAN PALACE CAR COMPANY, APPELLEE.

The Pullman Palace Car Company is not liable in damages for refusing to sell sleeping-car accommodations to a person not having a proper railroad ticket entitling him to the use of such accommodations.

APPEAL from Superior Court of Suffolk County.

DEVINS, J.—The gist of the plaintiff's claim is that he was wrongfully refused accommodations in the sleeping car of the defendant in coming from Baltimore to New York, by the defendant's servants, and that on declining to leave the car he was ejected therefrom.

His argument assumes that it was for the defendant to determine under what circumstances a passenger be allowed to purchase a berth, and incidentally the other accommodations afforded by the sleeping car. An examination of the contract with the Pennsylvania Railroad Company, by virtue of which the cars owned by the defendant were conveyed over its railroad, shows that while their cars were to be furnished by the defendant corporation, they were so furnished "to be used by the railroad company for the transportation of passengers," and that its employees were to be governed by the rules and regulations of the railroad company, such as it might adopt from time to time for the government of its own employees. While, therefore, the defendant company was to collect the fares for the accommodations furnished by their cars, keep them in proper order and attend upon the passengers, it was for the railroad company to determine who should be entitled to enjoy the accommodations of their cars and by what regulations this use of the cars should be governed. The defendant company could not certainly furnish a berth in its cars until the party requesting it had become entitled to transportation by the railroad company as a passenger, and he would also be entitled to the trans-